

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Case No. 1:22-cv-295

BLAINE HARRINGTON III,

Plaintiff,

v.

DEEPAK DUGAR, M.D. a MEDICAL
CORPORATION,

Defendant.

COMPLAINT

Plaintiff Blaine Harrington III (“Plaintiff”) sues defendant Deepak Dugar, M.D., a Medical Corporation (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is an individual who is a citizen of the State of Colorado.
2. Defendant is a medical corporation organized and existing under the laws of the State of California with its principal place of business located at 414 N. Camden Drive, Suite 801, Beverly Hills, CA 90210. Defendant’s agent for service of process is: Deepak Raj Dugar, 10660 Wilshire Boulevard, Unit 1603, Los Angeles, CA 90024.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. This Court has personal jurisdiction over Defendant because it maintained sufficient minimum contacts with New Mexico such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice. Further, as set forth

herein, jurisdiction exists pursuant to New Mexico's long-arm statute (§ 38-1-16) because Defendant transacts/solicits business in this State and committed a tortious act (copyright infringement) within this State, the cause(s) of action herein arise from the aforementioned tortious act, and Defendant has sufficient minimum contacts with this State.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. "A defendant 'may be found' in any judicial district to which he would be subject to personal jurisdiction." Allison v. Wise, 621 F. Supp. 2d 1114, 1118 (D. Colo. 2007); see also McGregor v. In Tune Music Grp., No. 15-62044-CIV-ZLOCH, 2016 U.S. Dist. LEXIS 190302, at *11 (S.D. Fla. July 29, 2016) ("In other words, 'if a court has personal jurisdiction over the defendants in a copyright infringement action, venue in that court's district is proper.'") (quoting Store Decor Div. of Jas Int'l, Inc. v. Stylex Worldwide Indus., Ltd., 767 F. Supp. 181, 185 (N.D. Ill. 1991)).

FACTS

I. Plaintiff's Business

6. Plaintiff is a well-known and highly regarded travel/location photographer based in Denver, CO, a four time SATW Travel Photographer of the Year (in addition to numerous other awards received during his career), and has worked on assignment for most major news, business and travel magazines.

7. With over 45 years in business (including working in Amsterdam, New York, Paris and Zurich), Plaintiff has expert knowledge of Europe, as well as most regions of the world. He maintains files of over 500,000 images from over seventy-five countries and is continually traveling to add new and updated material to the files.

8. Plaintiff's travel/location photography is highly sought after and has been published

in numerous magazines/travel calendars, including: Business Week, Delta Sky, Endless Vacation, Forbes, Geo, Islands, National Geographic Adventure, National Geographic Traveler, Newsweek, New York Times magazine, Outside, Popular Photography, Ski, Smithsonian, Time, and Travel + Leisure. He was also the travel photography columnist (bi-monthly "On the Road") for Shutterbug Magazine and has numerous corporate clients that have included his work in their marketing/advertising campaigns.

II. The Work at Issue in this Lawsuit

9. In 2012, Plaintiff created a professional photograph of the skyline of downtown Albuquerque at sunset titled "20121008_NM-TEX_2051" (the "Work"). A copy of the Work is exhibited below.



10. The Work was registered by Plaintiff with the Register of Copyrights on March 5,

2013 and was assigned Registration No. VAu 1-132-209. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as **Exhibit “A.”**

11. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

III. Defendant’s Unlawful Activities

12. Defendant owns and operates a plastic surgery center in Beverly Hills, CA.

13. Defendant advertises/markets its business primarily through its website (<https://www.scarlessnose.com/>), social media (e.g. <https://www.facebook.com/ScarlessNose/>), and other forms of advertising.

14. In October 2020 (after Plaintiff’s above-referenced copyright registration of the Work), Defendant published the Work (with an overlay of Defendant’s own registered trademark) on its website (at <https://www.scarlessnose.com/blog/albuquerque-patients-looking-for-a-specialist-rhinoplasty-surgeon/>) in connection with a blog post titled “Albuquerque Patients Looking for a Specialist Rhinoplasty Surgeon”:

Home / Blog / Albuquerque Patients Looking for a Specialist Rhinoplasty Surgeon

Albuquerque Patients Looking for a Specialist Rhinoplasty Surgeon!



15. The purpose of the foregoing blog post is to solicit plastic surgery patients residing in Albuquerque, NM.

16. A true and correct copy of screenshots of Defendant's website, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

17. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its business or for any other purpose.

18. Defendant utilized the Work for commercial use – namely, in connection with the marketing of its business to residents of Albuquerque, NM.

19. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

20. Through his ongoing diligent efforts to identify unauthorized use of his photographs, Plaintiff discovered Defendant's unauthorized use/display of the Work in December 2021. Following Plaintiff's discovery, Plaintiff notified Defendant in writing of such unauthorized use. To date, Plaintiff has been unable to negotiate a reasonable license for the past/existing infringement of his Work.

21. Indeed, Defendant's response (through counsel) to Plaintiff's pre-suit efforts to resolve this matter was for Defendant to demand that Plaintiff pay it \$1.01 as a result of Defendant's infringement.

COUNT I – COPYRIGHT INFRINGEMENT

22. Plaintiff re-alleges and incorporates paragraphs 1 through 21 as set forth above.

23. The Work is an original work of authorship, embodying copyrightable subject

matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

24. Plaintiff owns a valid copyright in the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

25. As a result of Plaintiff's reproduction, distribution, and public display of the Work, Defendant had access to the Work prior to its own reproduction, distribution, and public display of the Work on its website.

26. Defendant reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

27. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly displaying the Work for its own commercial purposes.

28. Defendant's infringement was willful as it acted with actual knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website ("© 2021 Dr. Deepak Dugar. All Rights Reserved"), indicating that Defendant understands the importance of copyright protection and intellectual property rights. Additionally, as referenced above, Defendant is the registered owner of its own trademark ("DD Scarless Nose") (Registraton No. 5538639), further indicating Defendant's knowledge of intellectual property rights. Defendant clearly understands that professional photography such as the Work is generally paid for and cannot simply be copied from the internet.

29. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

30. Plaintiff is entitled to recover his actual damages resulting from Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Work, which amounts shall be proven at trial.

31. Alternatively, and at Plaintiff's election, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed proper by the Court.

32. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover his costs and attorneys' fees as a result of Defendant's conduct.

33. Defendant's conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the Work;
- b. A declaration that such infringement is willful;
- c. An award of actual damages and disgorgement of profits as the Court deems proper or, at Plaintiff's election, an award of statutory damages for willful infringement up to \$150,000.00 for each infringement of the Work;
- d. Awarding Plaintiff its costs and reasonable attorneys' fees pursuant to 17 U.S.C. § 505;
- e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- f. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights

or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and

g. For such other relief as the Court deems just and proper.

Demand For Jury Trial

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 20, 2022.

COPYCAT LEGAL PLLC
3111 N. University Drive
Suite 301
Coral Springs, FL 33065
Telephone: (877) 437-6228
dan@copycatlegal.com

By: /s/ Daniel DeSouza, Esq.
Daniel DeSouza, Esq.

Exhibit “A”

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-132-209

**Effective date of
registration:**
March 5, 2013

Title

Title of Work: Blaine Harrington III Photography 20120116-20121129 12,692 Unpublished Photos

Completion/Publication

Year of Completion: 2012

Author

■ **Author:** Blaine Harrington III

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Blaine Harrington III

7533 South Overlook Way, Littleton, CO, 80128, United States

Limitation of copyright claim

Material excluded from this claim: text, jewelry design, architectural work, 2-D artwork, sculpture, map

New material included in claim: photograph(s)

Rights and Permissions

Name: Blaine Harrington III

Email: blaineharr@comcast.net

Telephone: 303-932-9062

Address: 7533 South Overlook Way

Littleton, CO 80128 United States

Certification

Name: Blaine G. Harrington III

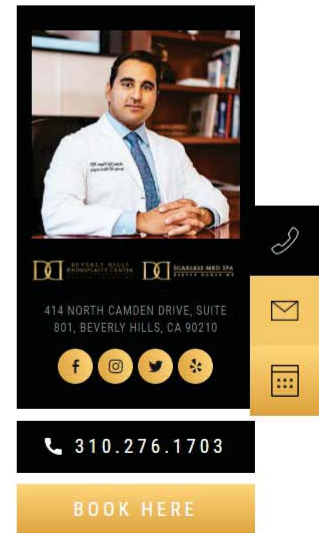
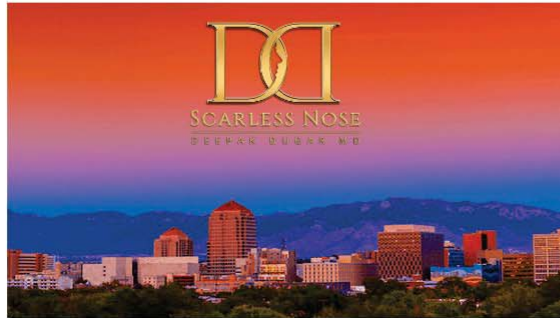
Date: March 5, 2013

Exhibit “B”



[Home](#) / [Blog](#) / [Albuquerque Patients Looking for a Specialist Rhinoplasty Surgeon!](#)

Albuquerque Patients Looking for a Specialist Rhinoplasty Surgeon!



We love our patients from Albuquerque! Dr. Dugar has a specialized technique that takes away the risk of looking like a different person! His specialized technique also takes away the risk of having any cuts or scars! People fly around the world to have surgery with Dr. Dugar and his specialized technique.

Dr. Dugar is one of the only surgeons in the United States who has dedicated his entire surgical practice to this one procedure! That procedure is **closed Scarless Nose™ Rhinoplasty**. It is a specialized technique that not many surgeons feel comfortable doing, even though it is arguably the best for first-time nose surgery patients! It is also the preferred way for celebrities and stars!

If you or your friend is interested in this scarless technique, please call, text, or email for more information!

Click this link [here](#) to find out more about our out of town patients!



Beverly Hills Rhinoplasty Center

Website: www.Scarlessnose.com

Phone: 310.276.1703

Email: info@scarlessnose.com

AUTHOR

Dr. Deepak Dugar

Director of Beverly Hills Rhinoplasty Center - Home of the Scarless Nose™ (Closed Rhinoplasty) Director of Scarless Med Spa

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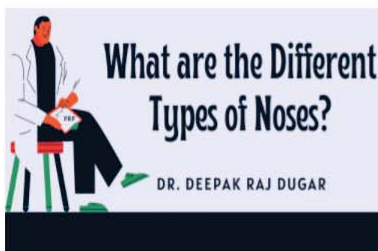
Dr. Dugar Featured on THE DOCTORS TV SHOW – CBS

Dr. Dugar, a medical expert for ABC News, E! News and Huffington Post, has now been featured on THE DOCTORS TV SHOW on CBS. This is an American syndicated talk show that is now on season 10 which airs in the USA, Canada, Mexico, Australia, Ire...



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